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Chairman: Mr. Kuchinsky ..... (Ukraine)
later: Ms. Groux (Vice-Chairman) ..... (Switzerland)

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* Items which the Committee has decided to consider together.

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The meeting was called to order at 10.20 a.m.

Agenda item 105: Human rights questions (*continued*) (A/59/225, 371 and 425)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*) (A/59/255, 319, 320, 323, 327, 328, 341, 360, 366, 377, 385, 401, 402, 403, 422, 428, 432, 436 and 525)

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(e) Report of the United Nations High Commissioner for Human Rights (*continued*) (A/59/36)

Situation of human rights in Afghanistan

1. **Mr. Bassiouni** (Independent expert on the situation of human rights in Afghanistan), speaking with reference to agenda item 105 (c), recalled that he had been appointed in April 2004, or more than a year after the Commission on Human Rights had requested the appointment of an independent expert, and was presenting to the Third Committee his first interim report (A/59/370), which was the result of in-depth consultations and work conducted during his mission to Afghanistan. Before giving an overview of the main issues dealt with in the report, he wished to point out that during the year preceding his appointment, he had directed a training programme for magistrates in Afghanistan, in accordance with the Bonn Agreement, and had acquired a very good understanding of the country and its situation.

2. He said that while President Karzai had demonstrated his commitment to the promotion of human rights, democratic institutions and the rule of law, one must keep in mind that the country had just emerged from 23 years of devastating war and that the resulting difficult situation challenged the will of the Government. One of the main obstacles to the realization of the goals set was the security situation and the fact that a large number of warlords and local commanders were still active, their links to drug traffickers also posing a major problem at every level.

3. Identified in the report were a number of priority issues concerning which measures must be taken by the Government. First of all, regarding the question of violations committed in the past and currently being committed, he mentioned the strategy adopted by the Office of the High Commissioner for Human Rights in Geneva for ascertaining the types of flagrant human rights violations that had gone unpunished after the conflict. It was very important to avoid impunity in order for the country to be able to move forward, and no less important to assess fully the security problems posed in a country still dominated by the military power of warlords and local commanders and by the growing economic power held by those engaged in poppy-growing and heroin traffic.

4. He congratulated the Afghan Government on its liberation of 856 persons who had been illegally detained for nearly 30 months, in most cases by the forces of the Northern Alliance under the command of General Dostum, in the north of the country. There had been allegations that the detainees had been victims of torture and other forms of mistreatment.

5. The situation in prisons under the control of the Afghan Government was also a matter of concern. He stressed that if the Government, which he in no way wished to blame, did not receive badly needed resources and aid from the international community, many of the problems existing in those prisons would not be solved. The situation of women and children detainees was particularly alarming.

6. Disputes over land and housing were another priority problem. He recalled that several million people had had to leave the country during the war, many of whom had been unable to regain possession of their property on returning.

7. In the area of education, it was essential to purge teaching materials of all elements that fostered a warlike mentality rather than inculcating respect for human rights.

8. He drew attention to a problem that was both legal and practical: the Coalition forces in Afghanistan had not concluded with the Government any official agreements concerning their status. He noted that as a result, he had been unable to obtain access to certain prisons under the control of the Coalition forces, especially those in Bagram and Kandahar. The Commission on Human Rights and the Third Committee should address an unequivocal message to

those forces aimed at discouraging the tendency to deny independent experts access to prisons concerning which allegations of mistreatment had been made.

9. Concerning the development of Afghan civil society, he stressed that the Government needed the support of the international community in order to take up the formidable challenges that it faced. The Afghan people, weary of 23 years of war, were impatient to embrace democracy, human rights and the rule of law. The United Nations Assistance Mission in Afghanistan (UNAMA), too, needed international support to succeed in its important mission.

10. **Mr. Bâzel** (Afghanistan) paid homage to the independent expert for his abilities and said that his delegation agreed with the expert on the unquestionable improvement in the situation of the people of Afghanistan and the considerable job done by President Karzai. One must not, however, lose sight of the fact that Afghanistan, having just emerged from a conflict, was going through a period of transition and that one of the main obstacles to be surmounted was the restoration of the rule of law and the re-establishment of the judicial system. Encouraging signs in that regard were the adoption of the new Constitution, on 4 January 2004, and the recent presidential elections.

11. Recalling briefly the mandate entrusted to the independent expert by the Commission on Human Rights, he said that he regretted that no plan comprising the various justice-related aspects was set forth in the report in detail and in depth. As a result, the report appeared to have an orientation that was more political than juridical, in contrast to the mandate given by the Commission.

12. In his delegation's opinion, the report dealt with issues that had already been covered by reports submitted to the General Assembly and also listed certain crimes that might very well be committed in any society and certain tribal traditions that were not prevalent in Afghanistan, in order to depict a situation characterized by systematic violations and violence.

13. Referring to paragraph 13 of the report, he expressed surprise that the independent expert considered the conflict involving the presence of the Soviet Army in Afghanistan an "internal conflict". Similarly, it had been the firepower of the forces that had invaded Afghanistan to drive out the Taliban that had been the cause of the destruction of national infrastructures.

14. He also disputed the use of the term "warlords" to designate persons who had taken part in the signing of the Bonn Agreement, as well as the accusation that Coalition forces had allegedly imparted legitimacy to those "warlords" by inviting them to be part of the new Government. He recalled that the Agreement signed in Bonn on 5 December 2001 had been approved by the Security Council on 6 December 2001 and that many analysts considered the Agreement a major success of the United Nations at the start of the twenty-first century. Peace was not established by means of slogans, but rather through a concrete analysis of the situation. Afghanistan knew what difficulties it faced. It was constantly progressing towards the objectives of disarmament, demobilization and rehabilitation, the formation of a new army and police force and the strengthening of democracy, but problems that had built up over 23 years would not be solved overnight.

15. He said he did not feel that the question of transitional justice was treated fully from the standpoint of the principles of international criminal law, for no account was taken of the foreign aggression and its legal implications. He noted that the independent expert's recommendations were often to the point, particularly with regard to security, but considered it unfortunate that no mention was made of Afghanistan's economic development, despite its impact on security.

16. In conclusion, addressing the advocates of an abstract justice that was oblivious of a specific situation which, on the contrary, was thoroughly concrete, he cited the remarks made by the Secretary-General in his report on the activities of the Organization (A/59/1) concerning the "relentless pursuit of justice".

17. **Mr. Fetz** (Canada) asked what measures, exactly, the independent expert might propose for setting up an independent system of justice that truly protected human rights. He said he would also like to hear the expert's opinion on the principal threats hanging over democracy and the rule of law, and consequently human rights, in Afghanistan and on how those threats could be countered.

18. **Mr. de Klerk** (Netherlands), speaking on behalf of the European Union, asked what the most effective way to establish the rule of law was, particularly with a

view to combating impunity. He said that he would like to know whether the independent expert might make specific proposals concerning transitional justice and that he was particularly interested in the issue of political rights, the relevance of which could not be overemphasized in the context of the recent presidential elections and the legislative elections of April 2005. He would like to see that issue dealt with in the light of the creation of political movements and parties, freedom of expression and freedom of the press.

19. He also asked whether specific initiatives might be taken both nationally and internationally to improve the situation of women in Afghanistan. He said he would also like to know what measures might be adopted to combat child abduction and trafficking in children.

20. Lastly, he requested details on the situation of displaced persons and refugees returning home and on the violations mentioned in the report.

21. **Mr. La** Yifan (China) said that the independent expert should receive assistance from the provisional authorities to gain access to prisons. His delegation wondered about the economic, social, cultural and political rights situation and wished to know what type of assistance the expert might furnish in that regard and how the international community might contribute.

22. **Mr. Ballestero** (Costa Rica) requested additional information on the release of persons illegally detained by the Coalition forces. The independent expert had indeed indicated that a number of prisoners had been released, but also that he had been unable to gain access to prisons controlled by those forces, which were supposed to be contributing to the promotion of human rights, not creating difficulties in regard to them. His delegation asked how such problems might be resolved.

23. **Mr. Bassiouni** (Independent expert on the situation of human rights in Afghanistan) said that it was very difficult to examine the situation of a country emerging from 23 years of conflict, involving both foreign aggression and internal disorders, without taking an overall view. Security issues affected stability, and security and stability in turn affected economic development, without which it was impossible to establish the institutions that were the foundations of democracy; and democracy could not exist without the rule of law, which guaranteed the enjoyment of human rights.

24. The progress achieved was a "process of gradual accretion" and the current problems would not be solved quickly. It was therefore indispensable to establish priorities, with each strategy adopted complementing, rather than excluding, the others.

25. He regretted that he had not had the time to delve into the question of persons detained in September and October 2001. He stated that they were in the hands of the Northern Alliance, but that he had not been able to ascertain to what extent the Coalition forces had acted side by side with it. Recalling the information given in paragraph 65 of his report, he reiterated that as soon as he had discovered the situation, shortly after his appointment, he had taken steps to obtain the release of the persons concerned.

26. He was very pleased, on the other hand, to have been able to visit Pol-e Charkhi prison and, while not wishing to accuse the Government, hoped to have shown the need to be watchful of compliance with all the Standard Minimum Rules for the Treatment of Prisoners. The living conditions of the prisoners left no doubt concerning the violations of the minimum rules concerning human rights and he asserted that none of the government officials with whom he had spoken had denied that fact otherwise than by complaining about the lack of resources.

27. Concerning the situation of women and children, he felt that the first stage involved the adoption of a law prohibiting the practice of giving young girls as payment of blood money, as promised by President Karzai. That practice was revolting to all members of the Government and no one was unaware of its existence, yet no one had done anything to abolish it. The second stage would involve changing certain cultural traditions, something that would require a far greater effort on the part of the Government and the international community.

28. One could only rejoice at seeing civil society grow stronger in Afghanistan. He had been able to meet the representatives of 36 organizations active in the human rights field, a promising sign in a country where the judicial system was in a period of transition.

29. Child abduction and trafficking in children were also a grave problem. Referring to the existence of a law prohibiting such practices, he said he had urged

President Karzai to launch a national public consciousness-raising campaign. An important general policy decision must be taken at the level of the Ministry of the Interior and the Ministry of Justice in order to draw more attention to the situation of women and children, which must become a priority. An integrated plan would be required, for there could be no question of giving different training to magistrates and police. By way of illustration, he pointed out that the Attorney-General had certain powers but they were not clearly defined with respect to the role of the Ministry of Justice. The Afghan Code of Criminal Procedure, which went back to 1961, gave the Attorney-General complete autonomy. The Ministry of Justice would like to have some kind of control, but there was a gap between the two authorities, aggravated by the fact that the control of the prison system had been transferred from the Ministry of the Interior to the Ministry of Justice, but the budget for that system still belonged to the Ministry of the Interior. Thus, the Ministry of Justice exercised technical control while the Ministry of the Interior had the resources and staff.

30. Recalling once again that much remained to be done, he pointed out that he had been able to conduct an extensive investigation in a very short time because he had been in Afghanistan for approximately a year and had known the country before being appointed. It was important to realize that the appointment of an independent expert had been delayed by more than a year and that, if the United Nations and the international community considered Afghanistan a priority and a country whose development required their aid, the reasons for that delay were hard to understand. He wished also to point out that he had been given his mandate without the necessary resources for carrying it out and that, had it not been for the independent means at his disposal, he would not have been in a position to bring to light the facts brought to the attention of the Committee. The final report was to be presented in January, which left little time, and he still lacked the resources required to conduct a study in a country where the problems were so complex.

31. He concluded by assuring the Committee that he would do his best with the limited resources available to him, but appealed to organizations such as the European Union, and also to donor countries, to take a greater interest in the existing problems and be more active in finding solutions for them.

32. **Ms. Wong** (United States of America) pointed out that the issuance of the independent expert's report coincided with presidential elections in Afghanistan, the first of their kind in that country. The elections would make it possible to solve more quickly the human rights issues enumerated in the report. The report of the United States Department of State on the human rights situation in Afghanistan in 2003 also took up those problems and the difficulties the Afghan people would have to cope with after 23 years of conflict. Like the independent expert, the United States felt that President Karzai's transitional administration had already done much and must be commended. It also saluted the courage and determination of the Afghans, who had travelled en masse on 9 October to exercise their right to vote.

33. The United States intended to organize a meeting with the independent expert on the question of American policy on persons detained in Afghanistan. It was determined to ensure the observance of the laws of warfare and took very seriously the accusations of improper behaviour or behaviour contrary to international law levelled against its armed forces. The few soldiers who were guilty of mistreatment and who were referred to by the independent expert were currently being prosecuted. The United States remained determined to work with the Coalition forces and the Afghan people to support the country's emerging democracy.

34. **Mr. Bassiouni** (Independent expert on the situation of human rights in Afghanistan) said that he felt it was important to restore the question of human rights violations to its proper context. As a result of the conflicts that had taken place in Afghanistan, many people had been displaced within their own country, while others had taken refuge in Pakistan and also in the Islamic Republic of Iran, a country that had recently decided not to host all the refugees to whom it had granted asylum during the war. There now arose, therefore, the problem of the return of more than 1.5 million refugees, some of whom had had that status for more than 10 years. They would return to villages where they were no longer necessarily welcome or where others had come into power, or sometimes only to find that others had taken possession of their houses or their land, which they could no longer recover. Their only means of survival was to accept the leadership of

local chiefs connected with drug trafficking and to take up poppy-growing, which was highly labour-intensive. The United Nations Office on Drugs and Crime had reported that 75 per cent of the opium consumed in Western Europe came from poppy crops in Afghanistan. If the estimates were correct, the revenue created by traffickers would amount to approximately US$ 1.3 billion in 2004. It was worth noting that such traffickers "employed" 100,000 persons, whereas the Afghan national army counted only 10,000 members and government resources totalled no more than $500 million. The country's reported human rights violations were therefore the result of that situation and the fact that it was impossible for the Government to put an end to it for want of adequate authority and of human and financial resources. The international community must therefore increase its support to the Afghan Government to help strengthen its army, police forces and resources. There was also a risk that, in the absence of a banking system, the traffickers would be the ones who controlled the country's trade.

35. Replying to the representative of China, he stated that, in the case of Afghanistan, economic, social and cultural rights were somewhat eclipsed by the priority of re-establishing security and the rule of law. Nevertheless, the country had a strong tradition of cultural rights associated with different ethnic and tribal groups, each of which tried to preserve its rights without their necessarily applying to other groups.

Human rights of migrants

36. **Ms. Pizarro** (Special Rapporteur on the human rights of migrants), speaking under agenda item 105 (b), recalled that her activities had led her to concern herself in recent years with migrations in the Mediterranean region and that in that connection she had visited Spain, Morocco and Italy. In February she had also visited the Islamic Republic of Iran to examine the question of mixed migration and its relationship to refugee outflows, focusing her work on the so-called voluntary repatriation programmes. In September she had been in Peru, where she had gathered information on the causes of emigration and the consular protection offered by that country to its nationals abroad. She hoped to be able to go to Burkina Faso in 2005, and was also awaiting a reply from the Government of Senegal for a visit to that country.

37. On her visits she had observed an intensification of international migratory pressures and the aggravation of certain problems, such as the illicit transfer of migrants and traffic in human beings. She had noted in particular an increase in the number of persons with irregular administrative status, and pointed out that improving the control and procedures for the expulsion of undocumented migrants necessitated close collaboration with the consular authorities of the country of origin.

38. During the period under consideration she had continued to receive complaints about presumed human rights violations, relating mainly to persons whose status was irregular. The situations that had given rise to her intervention included the following: (a) arbitrary detention; (b) distressing conditions of detention; (c) torture and mistreatment during detention, especially with regard to unaccompanied minors; (d) denial of detained immigrants' right to consular protection; (e) death of immigrants in the custody of the authorities; (f) death resulting from abusive use of force by public security agents; (g) non-compliance with minimum guarantees of a fair trial; (h) refoulement at borders; (i) summary expulsions; (j) impunity of perpetrators of crimes committed against immigrants; and (k) sexual violence. The cases involving women and unaccompanied minors were alarming. She said that she was also concerned by a number of situations involving violations of the human rights of migrant workers: (a) the imposing by employers of unacceptable working conditions, sometimes approaching slavery; (b) withholding of passports; (c) non-payment of wages; (d) changes in the terms of work contracts; (e) restriction of freedom of movement, insults and brutality and precarious housing; (f) denial of the right of association and assembly; and (g) abuses by migrant worker recruitment agencies resulting from lack of regulation of the sector.

39. She viewed the situation of migrant women working as domestic employees as a typical example of the three main problems posed by contemporary international migration: generalization, feminization and the virtual absence of rights. In the report presented by her to the Commission on Human Rights at its sixtieth session, in April 2004 (E/CN.4/2004/76), she described the unacceptable living, working and employment conditions of such women, who were exploited at will. She considered such women as victims of abuses and discrimination owing to their threefold condition as women, immigrants and, in

many cases, undocumented persons, adding that their children, too, were frequently victims of mistreatment inflicted by their guardians, who took advantage of the situation.

40. In the area of good practices in the management of migration flows it was encouraging to note that many regional processes were in existence. Such processes, which were largely informal, were aimed at the adoption of policy frameworks that would facilitate cooperation between States in that management. They fitted into a multilateral view of the management of such flows and extended to nearly every region of the world, with the exception of central and eastern Africa, the Middle East and the Caribbean. She cited the following examples: the Migration Dialogue for Southern Africa and the Migration Dialogue for Western Africa; the Regional Conference on Migration (also known as the "Puebla Process"), and the South American Conference on Migration ("Lima Process"); the Budapest Group; the Conference on Western Mediterranean Cooperation ("Five plus Five"); the Manila Process; the Bali Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime; and the Intergovernmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America, and Australia. Also, the Berne Initiative and the Global Commission on International Migration would shortly publish their final reports, which would contain an enumeration of good migration management practices that took into account the human rights of migrants.

41. The Special Rapporteur said she wished to congratulate the consular services of Mexico and the Philippines on their efforts to protect their nationals abroad. With regard to best practices in host countries, she mentioned Canada, the United States and various European countries, whose schemes for resettlement on the basis of humanitarian visas, though limited, helped protect migrants unable to return to their country of origin. She also drew attention to the efforts of the International Organization for Migration (IOM) to strengthen the support, training and consultancy programmes provided to its member States on managing migration flows while respecting human rights. She also noted that migration NGOs were working with intergovernmental consultative bodies.

42. Lastly, she said that migration brought to light structural problems that could not be solved by ad hoc measures, and even less by unilateral ones. In her view, a careful reading of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families should make it possible to adopt migration policies that respected international law and human rights.

43. **Mr. Vegas** (Peru) said he agreed with the Special Rapporteur that the human rights situation of migrants, particularly undocumented migrants, continued to deteriorate. Consequently, protection for the hundreds of thousands of Peruvian migrants had become a foreign policy priority for Peru, and the Minister for Foreign Affairs had recently signed, in New York, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Peru had convened a high-level conference of developing countries affected by migration flows, to be held in 2005. He asked the Special Rapporteur to give a preliminary account of the implementation of the Convention and the functioning of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, and to explain the links between that Committee and her own activities. He would also like to know what the Special Rapporteur's priorities for action would be in the future.

44. **Ms. Faye** (Senegal) said there were a very large number of migrants from Senegal throughout the world and her country wished their rights to be respected. Her Government included a minister whose sole responsibility was for Senegalese emigrants. She wondered how the Special Rapporteur obtained information on the living conditions of migrant domestic workers. She also asked whether Governments acted on the complaints the Special Rapporteur transmitted to them. Referring to paragraph 18 of the report, she asked why some Governments were requested to provide information and others not. She also wondered whether the Special Rapporteur planned to adopt an alternative approach to improving migrants' living conditions, since the methods currently being employed did not seem to be yielding the expected results. Referring to paragraph 54 of the report, she asked what percentage of States had regularized the situation of illegal workers. Lastly, she took note of the Special Rapporteur's request to visit Senegal and said she would transmit it to her Government.

45. **Mr. Litver** (Netherlands), speaking on behalf of the European Union, asked the Special Rapporteur

what steps were envisaged to avoid duplication of work during the consultations on migration management and to create genuine synergies among the various initiatives. With regard to migrant smuggling and trafficking in persons, he wondered whether awareness-raising and information campaigns in the countries of origin could be effective in putting a stop to the problem. Lastly, he asked whether the Special Rapporteur intended to mention best practices in host countries in her report for the benefit of other countries.

46. **Mr. Ballestero** (Costa Rica) said not only was Costa Rica a country of transit and origin, it currently hosted more immigrants and refugees than any other Latin American country. He asked the Special Rapporteur to explain what role countries of origin and host countries should play in burden-sharing.

47. **Mr. Raja** (Indonesia) said that, as part of its efforts to protect migrant workers, Indonesia had signed the United Nations Convention against Transnational Organized Crime and its two related protocols. He asked what role the regional processes for the protection of migrant workers could play in international mechanisms and particularly in the work of the Special Rapporteur.

48. **Ms. Pizarro** (Special Rapporteur on the human rights of migrants) said that, according to United Nations and IOM statistics, which had been borne out by several studies conducted in the United States and Europe, inter alia, there were some 180 million migrants worldwide and that number was indeed growing. She expressed concern at the conditions under which refugees sometimes returned to their country of origin and then became undocumented migrants.

49. Replying to the representative of Peru, she said she was already in direct contact with the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. With regard to her work in the future, she said the most important thing was for all States parties to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and to the United Nations Convention against Transnational Organized Crime and its two related protocols to amend their legislation to bring it into line with those instruments.

50. Replying to the representative of Senegal, she said information on the situation of migrant domestic workers was obtained from complaints received by the Office of the United Nations High Commissioner for Human Rights in Geneva, and by NGOs. Where ill-treatment was alleged, information was requested from the Governments, which might or might not choose to respond.

51. On the question put by the representative of the Netherlands on synergies among migration-management initiatives, she said such synergies should be created at the international level, for it was well known that the problem was not confined to the host countries and that the economies of some countries of origin were wholly or partly dependent upon remittances from migrant workers.

52. With regard to migrant smuggling and trafficking in persons, she said it was vital to employ properly trained border guards in order to ensure respect for migrants' human rights, particularly in detention centres, where women and children were placed. The developed countries should also address the root cause of the problem, namely the existence of a real market in their territory, for without that demand there would be no problem. Lastly, she said host countries should concentrate very closely on the issue of recognizing the situation of illegal workers and on the conditions of return of migrants to their country of origin, to ensure that they returned in a dignified and humane manner.

53. Replying to the question from the representative of Costa Rica, she said it was important for host countries to forge a burden-sharing relationship with the countries of origin. It was for that reason she had mentioned the example of the Mexican and Philippine authorities, who were making considerable efforts to assist any of their nationals in distress, and in particular to help the authorities of the country in question with identification procedures, since in many cases the individuals concerned either could not provide proof of their identity or held forged papers.

54. Replying to the representative of Indonesia, she said the signature and ratification of the two additional protocols to the United Nations Convention against Transnational Organized Crime were, in her view, part of the regional processes.

Situation of human rights in the Palestinian territories occupied since 1967

55. **Mr. Dugard** (Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967), introducing his report under agenda item 105 (c) (A/59/256), said Israel's conduct in the Occupied Palestinian Territory posed the same challenge to the credibility of international human rights as apartheid in South Africa during the 1970s and 1980s, particularly as the gross, systematic violations of human rights observed there had been committed not by undisciplined and uncontrolled militias but by one of the most disciplined and sophisticated armies in the world, directed by a stable Government.

56. Though it had been put on hold at several points since the matter had been brought before the Israeli courts, construction of the Wall continued, despite the Advisory Opinion given by the International Court of Justice (ICJ) in July 2004. Unfortunately, assaults on Gaza had drawn the international community's attention away from Israel's refusal to dismantle the Wall, even though it had been judged illegal by ICJ and had serious consequences. First, the Wall encouraged the development of illegal Israeli settlements by including most settlements in the "closed zone" between the Wall and the Green Line. As a result, the settler population had increased by 5.3 per cent in the past year, while population growth in Israel itself was only 1.4 per cent. In August 2004, the Israeli Government had granted over 2,000 construction permits to Israeli settlers, inevitably giving rise to increased settler violence against Palestinians. Second, the Wall had resulted in the seizure of Palestinian land, particularly in the regions of Tulkarem and Qalqiliya, where Israel had confiscated the best agricultural land and water resources, with no compensation whatsoever. Israel was now seizing East Jerusalem by constructing a wall around Greater Jerusalem to enclose settlements and Palestinian parts of East Jerusalem. As a result, some 60,000 Palestinians living in the outer suburbs of Jerusalem, on the West Bank side of the Wall, would be denied access to schools, hospitals and employment, and entire families would be divided. Third, the Wall greatly impeded the freedom of movement of Palestinians living on the West Bank side of the Wall. The permits they needed to access their lands on the other side of the Wall were frequently withheld, especially in respect of young men who were seen to be security threats. Moreover, gates granting access to the closed zone were frequently not open at scheduled times. Such a system could be likened to the "pass laws" of apartheid but, unlike the apartheid system, was totally arbitrary. It would appear that the Wall was designed not only to achieve security, but also, as was clear from its routing, to seize land for settlers and cause an exodus of Palestinians. With no access to their lands and their lives made miserable by the Israeli military presence, Palestinians had already started to leave their homes, as could be seen in Qalqiliya, now a ghost town.

57. With regard to Gaza, Israel had engaged in a scorched-earth policy. Rafah, Beit Hanoun and Jabaliya had all experienced the might of the Israeli army. In May 2004, 298 buildings, housing 710 families, had been destroyed and over 50 people killed in Rafah. In Gaza, 10 per cent of the population was now homeless. In October 2004, 130 people had been killed, over 400 injured and about 90 houses destroyed by the Israeli army in Jabaliya. Bulldozers had dug up roads, destroying electricity lines, sewers and water pipes in a brutal and disproportionate display of power. Most of those killed or injured had been civilians. Young children had been shot at their school desks and one girl had been brutally executed as she walked innocently to school. Gaza was a prison which would remain under Israeli control even after Israel withdrew its settlements, as confirmed in a report to the Israeli Ministry of Justice published on 24 October 2004. It was therefore important for the international community to serve notice on Israel that it would remain subject to the obligations contained in the Fourth Geneva Convention in respect of Gaza.

58. To conclude, while Israel did have legitimate security concerns, its Government had taken advantage of the paranoia of non-State terrorism in certain countries to embark on a reign of State terrorism in the Occupied Palestinian Territory, bringing into contempt the Charter and the principles enshrined therein.

59. **Mr. Israeli** (Israel) emphasized once again that the very nature of the Special Rapporteur's mandate was problematic insofar as it examined only one side of the conflict, prejudged key issues and was unique in comparison with the other regional and thematic special rapporteurs. The Special Rapporteur's most recent report, like previous reports, lacked context and balance, omitted certain facts and distorted the reality by presenting a caricature of victim and villain, thereby

running counter to the stated goals of the United Nations: an end to violence, respect for the mutual obligations of the road map and a return to dialogue, in line with Security Council resolutions 1397 (2002) and 1515 (2003).

60. The Israeli-Palestinian conflict over the past four years had been a complex web of suffering and responsibility. At the same time, it was impossible for a reasonable observer to fairly assess the current situation without fully viewing the context of violence and terror that had killed not only Palestinians but also over 1,000 Israelis. Qassam missiles, suicide bombers, snipers and attempts at "mega-terrorism" were directed against innocent civilians as part of the armed intifada being carried out by organizations such as Hamas, Islamic Jihad and the Fatah's Al-Aqsa Brigade, whose goal was to wipe his country off the map. No fair-minded observer could ignore the point that the Palestinian leadership was corrupt and had ignored calls to end the terror. The challenge facing his country was to find proportionate and morally acceptable measures to protect its citizens against such terrorist organizations, which had no respect for life or the law, saw the killing of women and children as a victory and had no compunction about turning both Israeli and Palestinian civilian areas into combat zones. The road map had taken account of such matters, focusing in its first clauses on the Palestinian duty to end terrorism, violence and corruption, as the Under-Secretary-General for Political Affairs had told the Security Council the week before. And yet the Special Rapporteur still adamantly refused to consider those factors in his reports and, without such context, had not found a single measure taken by his country to protect the lives of its citizens to be proportionate or acceptable.

61. The security fence was a temporary, non-violent defensive measure to prevent suicide bombing and, contrary to the Special Rapporteur's predictions, had been dramatically successful. Now the Special Rapporteur insisted that a fence could be built only on or within the Green Line, thereby demanding that his country's security barrier should predetermine a political line that did not necessarily take security into account, a position condemned by Israel's High Court in June 2004. The Special Rapporteur presented as fact his allegations that Israel intended to confiscate Palestinian land, encourage an exodus of Palestinians and incorporate settlers into Israel. Such claims had, however, been contradicted by clear statements by Israeli leaders and measures taken on the ground, including the current rerouting of the fence, in line with the Israeli High Court's decision. As stated by the Israeli Minister for Foreign Affairs on 17 March 2004, the fence was not a political act and was not intended to prejudge future negotiations with the Palestinians. His country's legal system, which offered methods of appeal and compensation, ensured that a balance was offered between his country's legitimate security needs and the humanitarian concerns of Palestinian residents of the region. Moreover, even before the High Court's ruling, significant changes had been made to the routing of the barrier and humanitarian arrangements had been augmented, facts intentionally misinterpreted by the Special Rapporteur.

62. His country's unilateral withdrawal from Gaza and the northern West Bank aimed to lessen the friction between Palestinians and Israeli security authorities and had been welcomed by much of the international community, including the United Nations Special Coordinator for the Middle East Peace Process and representatives of the Quartet. However, the Special Rapporteur continued to believed that the initiative responded to secret and unsaid goals on the part of Israel, conspiratorial claims that were belied by the current public debate there and by the Knesset's approval of a bill that sought to change the status quo in order to improve the situation for Israelis and Palestinians.

63. He regretted that the Special Rapporteur had seen fit to compare the State of Israel — a democracy, characterized by freedom of the press and freedom of expression, where Jews and Arabs had equal rights to vote and to be elected to public office — to the apartheid regime of South Africa, his homeland, which only illustrated his biases. His extremist and inappropriate calls to the international community should also be rejected.

64. The Israeli Government remained extremely concerned by the situation and was seeking a solution that respected the right of the Israelis to be protected from terror and that of the Palestinians to live their lives. The matter was regularly debated openly within Israeli society and in several international bodies.

65. By ignoring the real dangers in the region — support of terrorism, corruption, lack of reform and incitement to violence, and failing to recall the

obligations arising from bilateral agreements and international documents — the Special Rapporteur's report damaged the credibility of the Commission on Human Rights and, more importantly, the interests of the peoples concerned. It expressed a myth according to which one of the parties only had obligations and the other only had rights. Such a myth was a lie that was incompatible with the road map and the true spirit of international law, and would never end violence and foster a return to dialogue.

66. **Ms. Al Haj Ali** (Syrian Arab Republic), speaking on a point of order, said that the representative of Israel should not take advantage of the dialogue to make an extended general political statement.

67. **Ms. Vigny** (Switzerland) asked the Special Rapporteur about the role of the Israeli High Court of Justice in current discussions on the applicability of the Fourth Geneva Convention in the Occupied Palestinian Territory and his opinion on the Israeli Government's reaction to the hunger strike of the Palestinian prisoners in Israel.

68. **Ms. Rasheed** (Observer for Palestine) thanked the Special Rapporteur for his untiring efforts to spread awareness of the conditions endured by the Palestinians, victims of Israeli occupation for the past 37 years. In his report, the Special Rapporteur had referred to the Advisory Opinion of ICJ and reminded States of their obligation not to recognize the illegal situation resulting from the construction of the Wall and not to render aid or assistance to maintaining the situation. If Israel continued building the Wall, she wished to know what specific measures States could take to offset the terrible consequences for the Palestinians. She also denounced the Israeli practice of shamelessly attacking United Nations officials, special rapporteurs carrying out their mandates and other key international figures, using threats and intimidation, when they were merely witnessing the tragic daily lives of the Palestinians.

69. **Mr. Litver** (Netherlands) asked the Special Rapporteur about the consequences on the economic, social and cultural rights of the Palestinians of the three main problems he had examined in his report: the military incursions into the Gaza Strip, the violations of human rights and international humanitarian law arising from the construction of the Wall, and the pervasiveness of restrictions on freedom of movement. He also wished to know what Israel should do to ensure that any security measures respected the freedom of movement of the Palestinians. Lastly, he asked what the international community as a whole could do to ensure that human rights and international humanitarian law were respected in the Occupied Palestinian Territory.

70. *Ms. Groux (Switzerland), Vice-Chairman, took the Chair.*

71. **Ms. Khalil** (Egypt) asked whether, once the Wall had been built, its disastrous consequences on the rights of the Palestinians could be reversed, whether the United Nations and the international community could help resolve the problem, and what the role of the road map was.

72. **Mr. Dugard** (Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967), replying to the questions raised by the representative of Switzerland, said the High Court of Israel played an important role in promoting the rights of Palestinians in the occupied territory and had taken an important decision, although less radical that the Advisory Opinion of ICJ, by considering that the sufferings that the Wall would cause to the Palestinians could not be justified. Regarding the Fourth Geneva Convention, to date, Israel had considered that it was not applicable to the Occupied Palestinian Territory. The Government was reconsidering its position, but the problem was that, under the Convention, the settlements were purely and simply unlawful. As for the hunger strike of the Palestinian prisoners, many of whom were women and children, it had not been very successful but at least it had drawn attention to their conditions.

73. With regard to the measures that Member States could take, he recalled that the international community should not recognize the construction of the Wall or its consequences. The optimum solution would be for the Security Council to intervene, but, in the current political context, that was not likely. The situation recalled what had happened during apartheid, when the United States, the United Kingdom and France exercised their right of veto to prevent economic sanctions being taken against South Africa. As was the case at that time, Member States could always impose sanctions on an individual basis, and regional organizations, particularly the European Union, could exert pressure on Israel; however, the Union was in a paradoxical situation, because it

imported numerous products from the settlements. Civil society could also be more active and, for example, exert pressure on the Caterpillar corporation to stop providing bulldozers to the Israeli army.

74. In response to the questions posed by the representative of the Netherlands, he indicated that the economic decline that had accompanied the second intifada had worsened with the construction of the Wall, as could be seen in Qalqiliya.

75. Regarding freedom of movement, he said that the number of checkpoints in the West Bank had diminished, but they should be completely eliminated, because they were not effective and seemed to be designed mainly to humiliate the Palestinian population.

76. Referring to the remarks of the Israeli delegation, he regretted that it always used a strategy of attacking and slandering the messenger — rather than targeting the message — and considered it illustrative that the representative of Israel had not seen fit to refer to the occupation, which justified his comparing South Africa at the time of apartheid to Israel; or to the ICJ Advisory Opinion, under which Israel was called on to dismantle the Wall. ICJ had also considered that the Fourth Geneva Convention was applicable in the Occupied Palestinian Territory, as were the international human rights covenants and the Convention on the Rights of the Child. He emphasized that, basically, he limited himself to reiterating the Advisory Opinion, which the international community should abide by, as it had done in the case of South Africa, condemned in 1971 for its occupation of Namibia.

77. The road map was doomed, owing mainly to the Israeli Government, and especially to the rapid expansion of the settlements in the West Bank. He was not opposed to the withdrawal from Gaza, but regretted that it was accompanied by a show of force on the part of the Israeli army and, in any case, the Gaza Strip remained under Israeli control.

78. **Mr. Gzllal** (Libyan Arab Jamahiriya) welcomed the Special Rapporteur's report (A/59/256), which reflected the reality of a situation in the Occupied Palestinian Territory that was growing worse every day. It was important to recognize that the Wall had not been built for security reasons and to underscore that, as the International Court had stated in its Advisory Opinion, the settlements were illegal. Indeed, the settlements were more like military camps than anything else.

79. He wondered why the Special Rapporteur had not referred to the international community's obligation to urge Israel to implement the Advisory Opinion. Evidently, it was a difficult issue, but it was extremely important.

80. **Ms. Al Haj Ali** (Syrian Arab Republic), praising the quality of the Special Rapporteur's report, said that, in his statement, he had mentioned serious violations by Israel of the rights of Palestinians. It was necessary to deal with the violations arising from the construction of the Wall and the expansion of the settlements, both of which were contrary to international instruments and United Nations resolutions.

81. While emphasizing the Special Rapporteur's courage in preparing his report, which was an essential official document, she would have liked him to make recommendations to individual countries and to the international community on the best way to oblige Israel to respect the provisions of the relevant international instruments. Nevertheless, he had made some pertinent oral recommendations.

82. **Ms. Wong** (United States of America) said she was disappointed that the Special Rapporteur's report and some of his comments were not objective. In particular, the report did not mention Israel's security needs. The goals of the road map would not be met by considering only one of the parties.

83. As to the Advisory Opinion of ICJ, the Special Rapporteur had stated that it was necessary to reach a negotiated solution based on international law, leading to the creation of two peacefully coexisting States. The Wall, whose final route was still undecided, was only one element of a complex conflict, which was also marked by Palestinian attacks on Israeli civilians and the incapacity of the Palestinian authorities to prevent certain acts.

84. Any sustainable solution required the issues dividing the parties to be resolved. The parties had responsibilities and obligations and should exercise the greatest restraint so as to end violence and terror, and avoid an escalation of tension. The United States supported Israel's right to self-defence and considered that, until the Palestinians could ensure security, Israel would have to take unilateral measures.

85. **Mr. Zeidan** (Lebanon) said he was glad that the Special Rapporteur had had the courage to describe the situation as he saw it and as the international community saw it. He had taken the problem of Israel's security and self-defence into due consideration, developed his arguments and drawn the most logical conclusions. He asked whether the Special Rapporteur found difficulty in carrying out his mandate and how the international community and the two parties to the conflict reacted.

86. **Ms. Majali** (Jordan), associating herself with the delegations that had welcomed the clarity of the Special Rapporteur's report, said that the construction of the Wall, which impeded freedom of movement and divided land, casting doubts on the whole concept of the Palestinian State, was contrary to Security Council resolutions 242 (1967) and 338 (1973). According to the ICJ Advisory Opinion, the route of the Wall did not respect the 1967 borders and violated the Geneva Conventions on human rights and international humanitarian law. The Opinion should therefore be implemented. She, too, would have liked the Special Rapporteur to have made specific recommendations regarding the solution of the question.

87. **Mr. Dugard** (Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967), replying to the representatives of the Libyan Arab Jamahiriya, the Syrian Arab Republic, Lebanon and Jordan, said the recommendation he could make was to urge States to do everything possible to ensure that the ICJ Advisory Opinion was complied with and that Israel terminated its occupation so that the parties could return to the negotiating table.

88. In answer to the question posed by Lebanon, no one was preventing him from carrying out his task, and civil society even supporting it strongly. Unfortunately, the Israeli authorities did not recognize his mandate and, therefore, would not enter into discussions with him; if they had done so his report would have been more nuanced. Although it was not perfect, it was as impartial as possible under the circumstances.

89. He agreed with the representative of the United States that a negotiated solution was essential. However, the Israeli Government claimed that it had no partner with which to negotiate and, owing to the elections, the United States Government had not assumed the leadership role in the region incumbent on it and had rejected the ICJ Advisory Opinion, adopted by 14 votes to 1. The Court deserved greater respect than the United States granted it. The United States should be part of the solution; currently it was part of the problem.

90. **Mr. Israeli** (Israel) said that his country supported the special rapporteurs on condition they were impartial. In complex situations, the context had to be taken into consideration. The figures mentioned by the Special Rapporteur were not corroborated. There were absolutely no grounds for speaking of confiscation of land, inasmuch as appeal and compensation mechanisms existed in Israel, or of the destruction of housing leaving 10 per cent of the population of Gaza homeless. Stating that the West Bank checkpoints were sources of humiliation was also partial. The decrease in the number of such checkpoints was a direct consequence of the construction of the Wall — something that Israel did not want, but which constituted a barrier against terror.

91. As to the Advisory Opinion of ICJ, the Israeli High Court had asked for the Israeli Government's legal opinion, and the Government as always would cooperate. Lastly, to indicate that the road map was doomed was a rebuff, a sign of hopelessness, and such words should not be uttered in the Third Committee.

The meeting rose at 1.05 p.m.